IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.251 of 2006.

Date of Decision :.17.11.2006.

Balak Ram …Petitioner.

Versus:

State of H.P. and others …Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr.Justice Deepak Gupta, Judge

Whether approved for reporting?[1]

For the petitioner: Mr.Rajiv Sharma, Sr.Advocate
Mr.Tara Singh Chauhan, Advocate.

For Respondents. Mr.M.S.Chandel, Advocate General With Mr.J.K.Verma, Dy. Advocate General.

V.K. Gupta, C.J (Oral).

The impugned order clearly states that a show cause notice was issued to the petitioner vide office memo No. 6383 dated 24th February, 2006. It further states that because the petitioner failed to submit his reply till the passing of the impugned order, that is 13th March, 2006 it was felt that he had nothing to say, " to put his position clear". Contrary to this recital in the impugned order about the petitioner not submitting his reply till the date of the passing of the impugned order, there are two contrary facts on record. Firstly we have at page 29 of the writ petition a copy of the reply dated 2.3.2006 (Annexure:P-7) and secondly the reply filed by the respondents,

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

supported by the affidavit of Conservator of Forests, Bilaspur Forest Circle, which clearly states that the petitioner did submit his reply but the same," was not satisfactory". This clear contradiction leads the Court to draw an irrefutable conclusion that the recital in the impugned order about the petitioner not submitting the reply is incorrect. Therefore the impugned order suffers from a patent illegality as well as an error apparent on the face of it in as much as even though the petitioner did submit his reply, it was not taken into consideration before passing the impugned order. On this short ground alone the impugned order is quashed and set aside with all consequences but with liberty to the respondents to proceed afresh against the petitioner, if so advised but in accordance with law. The writ petition is disposed of.

CMPs. No.376 and 377 of 2006.

In view of the disposal of the writ petition, all the pending applications are also stand disposed of.

(V.K.Gupta),
Chief Justice.

(Deepak Gupta),
Judge.

November 17, 2006(R)